IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.09.2023

PRONOUNCED ON : 13.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

C.M.A.No.493 of 2019

1. Lakshmi
2. Minor Dineshkumar
3. Minor Jayakumar

(Appellants 2 & 3 are represented by their next friend and natural guardian 1st appellant)

4. Raji
5. Kasiammal ...Appellants

Vs.

1. S.Karthikeyan

2. The Branch Manager,
   National Insurance Co. Ltd.,
   Anuradha Complex, 3rd Floor,
   Opp. to Raja Theatre,
   Bangalore Road, Krishnagiri – 1 ...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decreetal order dated 30.01.2009 made in M.C.O.P.No.790 of 2005 by the learned Motor Accident Claims Tribunal/Additional District Judge, Krishnagiri.

For Appellants	:	Mr.Mukund R.Pandian
For Respondents	:	R1 – Notice dispensed with Mr.J.Chandran for R2

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants against the Award dated 30.01.2009 made in M.C.O.P.No.790 of 2005 by the learned Motor Accident Claims Tribunal/Additional District Judge, Krishnagiri, seeking enhancement and questioning the liability fixed on the first respondent owner of the offending vehicle.

2 The appellants are the claimants and they filed claim petition in M.C.O.P.No.790 of 2005 before the learned Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri, claiming compensation of

Rs.15,00,000/- for the death of one Gunasekaran, who is husband of the first appellant, in the accident that occurred on 18.11.2004.

3 The claim petition was not contested by the first respondent viz. the owner of the offending vehicle and the second respondent/Insurance Company only contested the claim petition and they filed detailed counter denying all the allegations apart from disputing the liability.

4 Before the claims Tribunal, On the side of the claimant P.Ws.1 to 3 were examined and Exs.P1 to P7 were marked. On the side of the second respondent/Insurance Company, R.W.1 and R.W.2 were examined and Ex.R1 and Ex.R2 were marked.

5 The Tribunal, on an assessment of the entire evidence on record, fixed the liability on the owner of the offending vehicle and awarded a sum of Rs.8,53,000/- as compensation along with 7.5% interest. Aggrieved by the order of the Tribunal in fixing the liability on the first respondent/owner of the offending vehicle and seeking enhancement, the claimants are before this Court with the present civil miscellaneous appeal.

6 Learned counsel appearing for the appellants/claimants would submit that on 18.11.2004 when the deceased was proceeding in his TVS 50 XL bearing Registration No.TN 29 5988 from Sellampatti towards Pochampalli proceeding on the left side the road, slowly and cautiously, observing the traffic rules, the rider of TVS Centra Bike, bearing Reg.No.TN 24 4037 drove the vehicle in a rash and negligent manner at uncontrollable speed, without sounding horn and without minding the traffic rules, came at high speed and dashed against the TVS 50, due to which, the deceased sustained fatal injuries and succumbed to the injuries. First respondent is owner and the second respondent is insurer of the offending vehicle.

6.1 Further the Tribunal erred in fixing the liability on the first respondent/owner of the offending vehicle and the Tribunal ought to have fixed the liability on the second respondent/Insurance Company since the offending vehicle has validly insured with the second respondent. Even though the rider of the offending vehicle at the time of accident did not posses the valid driving license, the Tribunal would have ordered pay and recovery, since there is violation of policy conditions. To support his contentions, the learned counsel relied on the decision of the ***Hon'ble Full of Bench of the Hon'ble Supreme Court*** reported in ***MANU/SC/0021/2004*** in the case of ***National Insurance Co. Ltd., vs. Swaran Singh and Ors.***

6.2 The learned counsel appearing for the appellants would submit that even though the original salary slip of the deceased was marked as Ex.P5, in which it is stated that gross salary of the deceased is Rs.7,567/- p.m., but the Tribunal taken the net salary of Rs.4,265/- and fixed monthly of the deceased at Rs.6,000/- p.m. and the Tribunal ought to have taken the gross salary of the deceased. Further the Tribunal wrongly deducted 1/3rd of the salary towards personal expenses of the deceased, instead of deducting 1/4th since there is more than three dependents.

6.3 The Tribunal erred in applying the multiplier as 16 but the deceased was 39 years at the time of accident and hence the correct multiplier would be 17. As far as the compensation awarded under the other heads are very low and needs to be enhanced. Therefore on the whole, the finding of the Tribunal in fixing the liability on the owner of the offending vehicle has to be set aside and the Award also requires interference of this Court.

7 The learned counsel appearing for the second respondent/Insurance Company would submit that the accident had occurred only due to rash and negligent driving of the deceased, who drove the vehicle at the time of accident and hence the deceased himself is cause for the accident and since he is a tort-feasor, the claimants, who are the legal heirs of the deceased are not entitled to get compensation from the second respondent/Insurance Company.

7.1 The learned counsel further contended that the first respondent owner of the offending vehicle allowed the person, who did not possess valid driving license to drive the vehicle insured with the second respondent, which is violation of the policy conditions. As per Section 3 of the Motor Vehicles Act, the second respondent is not liable to pay any compensation to the claimants. The tribunal rightly appreciated the evidence on either side and accepted the contention of the second respondent and hence exonerated the second respondent totally from the liability and rightly fixed the liability on the first respondent/owner of the offending vehicle. There is no merit in the appeal the same is liable to be dismissed.

8 The first respondent, who is the owner of the offending vehicle remained ex-parte before the Tribunal and notice to R1 was dispensed with.

9 Heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the second respondent and perused the materials available on record.

10 The accident is not in dispute and the claimants are the legal heirs of the deceased is also not in dispute. The first respondent is owner of the offending vehicle, which was insured with the second respondent. It is the main contention of the second respondent/Insurance Company that the deceased himself drove the vehicle in a rash and negligent manner and caused the accident and hence he is a tort-feasor and therefore the claimants are not entitled to get compensation and further the rider of the offending vehicle was not having valid driving license at the time of accident. In this regard, admittedly, at the time of accident, the offending vehicle was validly insured with the second respondent. The deceased, who is a third party as per the terms of the insurance policy, sustained fatal injuries in the accident that had occurred due to rash and negligent driving of the rider of the offending vehicle. Hence the second respondent/Insurance Company cannot totally be exonerated from the liability. The Hon'ble Supreme Court, in the decision relied on by the learned counsel for the appellants, has clearly stated that even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured.

11 Even though the second respondent took some steps to prove the violation of policy condition by the first respondent/owner of the offending vehicle by allowing the person to drive the vehicle who did not posses valid driving licence, the Tribunal can direct the insurer to pay the award amount and the Insurance Company can recover the same from the insured. This Court is of the view that the insurer can pay the award amount and it shall recover the same from the insured owner of the offending vehicle, since the affected party is a third party and the offending vehicle at the time of accident has validly insured with the second respondent/Insurance Company.

12 Therefore the finding of the Tribunal in fixing the liability on the owner of the offending vehicle is set aside and the second respondent/Insurance Company is liable to pay the Award amount and it can recover the same from the owner of the offending vehicle.

13 As far as quantum of compensation is concerned, admittedly the deceased at the time of accident was working as Conductor in the Tamilnadu Transport Corporation and his net salary was Rs.4,265/ and the Tribunal based on the document Ex.P5 fixed the monthly salary of the deceased at Rs.6,000/- and applied the correct multiplier 16 as per the II schedule of Section 163 of Motor Vehicles Act, since it is the case before the case of **Sarala Varma vs. Delhi Transport Corporation**. But, even though there were five dependents, the Tribunal wrongly deducted 1/3rd income towards personal expenses of the decease and hence this Court fix 1/4th deduction and future prospect shall be at 40%. Accordingly Loss of income is calculated hereunder:

Rs.6000/- x 12 = 72,000/-

Rs.72,000/- + Rs.28,800/- (40%) = Rs.1,00,800/-

Rs.1,00,800/ - Rs.25,200/- (1/4th deduction) = Rs.75,600/-

Hence the annual income of the deceased comes around Rs.75,600/-.

Loss of Dependency comes to Rs.75,600/- x 16 = Rs.12,09,600/-

14 In view of the said discussions the award is modified as follows:

Sl. No.	*Various Heads*	*Award of the Tribunal Rs.*	*Award of this Court Rs.*
1.	Loss of Dependency	7,68,000.00	12,09,600.00
2.	Loss of Consortium	25,000.00	40,000.00
3.	Loss of Love and Affection to minor children (each Rs.15000/-) to parents of the deceased (each Rs.1000/-)	50,000.00	50,000.00
4.	Transportation	5,000.00	10,000.00
5.	Funeral expenses	5,000.00	10,000.00
TOTAL COMPENSATION		**8,53,000.00**	**13,19,600.00**

15 The appellants/claimants are therefore entitled to enhanced compensation of Rs.13,19,600/- along with 7.5% interest from the date of claim petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced compensation along with 7.5% interest, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order and shall recover the same from the first respondent/owner of the offending vehicle. The first appellant/wife is entitled to Rs.4,00,000/-, 2nd and 3rd minor claimants are entitled to Rs.3,00,000/- each and 4th claimant/father is entitled to Rs.1,19,600/- and 5th claimant/mother is entitled to Rs.2,00,000/-. On such deposit being made, the Tribunal is directed to pay the same directly to the accounts of the all the claimant as per the decision of the Division Bench of this Court reported in *2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur, Vs. Rajesh and Others),* after verifying the two minors are attained majorty, if not, their shares shall be deposited in the nationalised Bank till they attain majority.

16 With the above observations and directions, this civil miscellaneous appeal is disposed of. Connected miscellaneous petitions is also closed. No costs.

13.03.2024

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Speaking Order: Yes/No
Neutral citation: Yes/No

To

1. The Motor Accident Claims Tribunal/
   Additional District Judge, Krishnagiri.
2. The Section Officer, V.R.Section, High Court, Madras.

P.VELMURUGAN. J.,

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Pre-Delivery Judgment in

C.M.A.No.493 of 2019

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